

ARTICLE X. ADMINISTRATION & ENFORCEMENT

Section 10.1 Permits & Approvals

A. **Permit Requirements.** No land development or subdivision of land, as defined under Section 11.2, may commence in the Town of Underhill until all applicable municipal land use permits and approvals have been issued as provided for under the Act [§4446] and these regulations, unless the development is specifically exempt from municipal regulation under Section 10.2. Municipal land use permits and approvals under these regulations include:

1. **Zoning permits** issued by the Zoning Administrator under Section 10.3 for all development, including signs under Section 3.16.
2. **Access approval** issued by the Development Review Board under Section 3.2 for access to pre-existing lots that do not have frontage on public roads or public waters.
3. **Site plan approval** issued by the Development Review Board under Section 5.3 for all permitted uses that require site plan review.
4. **Conditional use approval** issued by the Development Review Board under Section 5.4 for all conditional uses listed under Article II zoning district tables, and for other development as specified in these regulations
5. **Subdivision approvals**, issued by the Development Review Board under Sections 7.5 and 7.6 for the subdivision or re-subdivision of land.
6. **Planned residential or planned unit development (PUD or PRD) approval** under Section 9.4 for planned development, in association with subdivision approval.
7. **Certificates of occupancy** issued by the Zoning Administrator under Section 10.4(A), for development for which a zoning permit has been issued prior to occupancy or use; and
8. **Certificates of compliance** issued by the Zoning Administrator under Section 10.4(B), as required by the Development Review Board in association with final subdivision approval, following the completion of required improvements.

B. **Additional Permits and Approvals.** Additional municipal, state and federal permits or approvals may be required for activities associated with land development and subdivision including, but not limited to the following:

1. **Highway Permits** issued by the Underhill Selectboard to access or work within town highway rights-of-way, or the Vermont Agency of Transportation (VTTrans) to access or work within the VT Route 15 right-of-way.
2. Municipal "Certificates of Approved Location" issued by the Selectboard for salvage yards under these regulations (see Section 4.17), and as regulated by the state.
3. A variety of state permits or certifications including but not limited to: wastewater (septic) system and potable water supply permits, construction and stormwater permits, wetlands permits, stream alteration or crossing permits, public health and safety permits, child care facility licenses and Act 250 permits.

- a. As required under the Act [§4449(e)], municipal application forms and municipal land use permits or approvals issued under these regulations shall include a statement, in content and form approved by the Secretary of the Agency of Natural Resources, that state permits may be required and that the applicant or permittee should contact the state's regional permit specialist or individual state agencies to determine which state permits must be obtained before any construction may commence.
 - b. The Zoning Administrator or Development Review Board may require that an applicant submit a state project review sheet with their application that identifies state and federal permits to be obtained by the applicant.
4. Documentation that state, federal and other municipal permits and approvals have been obtained by the applicant may be required, as applicable, prior to:
- a. the issuance of a certificate of occupancy or compliance under Section 10.4;
 - b. submitting an application for final subdivision review under Section 7.6, unless waived by the Development Review Board; and
 - c. recording a subdivision plat in the land records of the town under Section 7.7.
- C. **Coordinated Review.** The Zoning Administrator will coordinate the development review process on behalf of the Town of Underhill, refer applications to the appropriate board and officials, and provide application forms, checklists, information and assistance to applicants.
1. The Zoning Administrator will direct anyone applying for a municipal land use permit to contact the state's regional permit specialist to ensure timely action on any required state or federal permits. It remains the obligation of the applicant to identify, apply for and obtain state and federal permits.
- D. **Revocations.** In accordance with the Act [§4455], on petition by the town the Environmental Division of the Superior Court may revoke a municipal land use permit issued by the town if it determines that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Section 10.2 Exemptions

- A. The following uses and structures have been determined to impose no impact or a de minimus impact on the surrounding area and the overall pattern of land development in the town in accordance with the Act [§4446] and, unless otherwise regulated under the Flood Hazard Area Overlay District (Article VI), are exempt from these regulations. Outside of Special Flood Hazard Areas, no municipal permits or approvals shall be required for:

1. The normal maintenance and repair of existing structures, utilities and infrastructure which does not result in any expansion or relocation, including any change to the footprint or height of a structure, or a change in use.
2. Residential entry stairs (excluding decks and porches), handicap ramps, walkways, and fences or walls less than six feet in height which do not obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular or pedestrian traffic (see Section 3.5).
3. Exterior patios constructed without a permanent foundation.
4. Minor fill, grading or excavation that is incidental to regular road and driveway maintenance (including culvert replacements and ditching), and to residential lawn and yard maintenance (e.g., for septic systems, gardens or landscaping) and which does not change the existing elevation of land by more than two feet over a total area of no more than 10,000 square feet.
5. Resurfacing an existing driveway, or a road within an existing or approved right-of-way, that does not result in driveway or road widening or relocation.
6. Recreational trails or paths located outside of required stream and wetland buffer areas under Section 3.19 that do not involve or require the development, construction or use of structures or parking areas (e.g., walking, hiking, cross-country skiing and/or snow mobile trails).
7. One accessory structure per lot, with written notification to the Zoning Administrator, provided that the structure does not exceed 200 square feet in floor area and 10 feet in height and meets all setback distances for the district in which it is located.
8. Transit or bus stop shelters approved by the Underhill Selectboard or the Vermont Agency of Transportation, which do not exceed 200 square feet in area and 12 feet in height, are set back at least five feet from edge of the travel lane, and do not otherwise interfere with corner visibility or sight distances for vehicular traffic.
9. Signs specifically exempted from these regulations under Section 3.16.
10. Garage sales, yard sales, auctions or related activities not exceeding three consecutive days, nor more than 12 days in any calendar year.
11. A home office within a principal dwelling or accessory building that is carried on by a resident of that dwelling, and which involves no signs, public access or outdoor storage or displays (see Section 4.11).
12. Certain temporary structures and uses exempted under Section 4.19 of these regulations, with written notification to the Zoning Administrator.

B. The following uses are specifically exempt from local land use and development regulations in accordance with the Act [§§4412, 4413]. No zoning permit or approval shall be required for:

1. Accepted agricultural and best management practices (AAPs, BMPs) as those practices are defined by the Secretary of the Agency of Agriculture, Food and Markets, including farm structures as defined under the Act [§4413]. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Zoning Administrator prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary.
2. Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation.
3. Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board under 30 V.S.A. §248, including net metered renewable energy facilities (e.g., wind generators, solar panels).
4. Telecommunications facilities as defined under 30 V.S.A. §248a, when and to the extent that jurisdiction for such facilities are assumed by the Public Service Board.
5. Hunting, fishing and trapping on public or private land as specified under 24 V.S.A. §2295. This specifically does not include facilities that support such activities, such as firing ranges and rod and gun or fish and game clubs, which are subject to these regulations.

C. Decisions of the Zoning Administrator as to whether a use is exempt from permit requirements under this section may be appealed to the Development Review Board under Section 10.5.

Section 10.3 Zoning Permit

A. **Applicability.** No land development subject to these regulations shall commence in the Town of Underhill until a zoning permit has been issued by the Zoning Administrator, in accordance with the Act [§4449].

B. **Application Requirements.** The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Underhill Selectboard. In addition, the following will be required as applicable:

1. Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be

1 accompanied by a copy of a sketch plan, no smaller than 8.5" x 11", drawn to scale, that
2 accurately depicts the following:

- 3
4 a. the dimensions of the lot, including existing and proposed property boundaries;
5 b. the location, footprint, and height of existing and proposed structures and
6 additions;
7 c. the location and dimensions of existing and proposed accesses (curb cuts),
8 driveways and parking areas;
9 d. the location of existing and proposed easements, rights-of-way and utilities;
10 e. setbacks from property boundaries, road rights-of-way, surface waters, and
11 wetlands;
12 f. the location of existing and proposed water and wastewater systems; and
13 g. such other information as may be needed to determine compliance with these
14 regulations as specified on application checklists provided by the Zoning
15 Administrator.

16
17 2. For development requiring one or more approvals from the Development Review Board
18 and/or Selectboard prior to the issuance of a zoning permit, application information and
19 fees shall be submitted concurrently with the application for a zoning permit. The
20 Zoning Administrator shall refer the application to the appropriate board or municipal
21 official following submission.

22
23 3. Additional copies of applications for development within Special Flood Hazard Areas
24 under Article VI, as provided by the applicant, must be forwarded by the Zoning
25 Administrator to the State Floodplain Coordinator within 10 business days of receipt of
26 the application. All other applications that require referral to a state agency shall be
27 done by the applicant with evidence of that submission provided to the Zoning
28 Administrator prior to the issuance of any zoning permit.

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30 4. The Zoning Administrator or Development Review Board may reject an application that
31 misrepresents any material fact, in accordance with the Act [§4470a].

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33 C. **Issuance of Zoning Permits.** A zoning permit shall be issued by the Zoning Administrator
34 only in accord with the following provisions:

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36 1. No zoning permit shall be issued by the Zoning Administrator for any use or structure
37 that requires approval of the Development Review Board (DRB) until DRB approval has
38 been obtained. DRB decisions, including approvals, may be appealed under Section
39 10.5; however, administrative zoning permits issued by the Zoning Administrator for
40 DRB-approved development cannot be separately appealed under Section 10.5.

41
42 2. No zoning permit shall be issued by the Zoning Administrator for the development of a
43 lot for which subdivision approval is required until subdivision approval has been
44 granted by the DRB and, where also required, a certificate of compliance has been
45 issued in accordance with Section 10.4.

3. For uses requiring state agency referral, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state, whichever is sooner.
4. If public notice has been issued by the Underhill Selectboard for their first public hearing on a proposed amendment to these regulations, the Zoning Administrator shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act [§4449(d)].
5. Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the Development Review Board. If the Zoning Administrator fails to act within the 30-day period, on appeal to the DRB a permit shall be deemed issued on the 31st day.
6. All zoning permits shall include a statement of time within which appeals may be taken under Section 10.5; and shall require the posting of a notice of permit, on a form prescribed by the town, within view of the nearest public right-of-way most nearly adjacent to the subject property until the time for appeal has expired.
7. The Zoning Administrator shall deliver a copy of the permit to the Listers and post a copy of the permit at the town office within three days of the date that the permit is issued. The permit shall be posted for a period of 15 days from the date of issuance.

D. Effective Dates and Permit Renewals

1. **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 10.5 has passed or, in the event that a notice of appeal is properly filed, until the appeal has been decided. Permits shall remain in effect for one year from the date of issuance, unless the permit specifies otherwise.
 - a. Development authorized by a zoning permit shall be substantially commenced within this period or the zoning permit shall become null and void, unless a permit extension is obtained by the permittee. For a zoning permit approving multiple structures, each structure shall have substantially commenced within the one-year period except for a permit that approves a detached accessory dwelling and a principal dwelling in which case one of the dwellings shall have substantially commenced within the one year period and the second dwelling shall have substantially commenced within a three year period from when the permit becomes effective.
 - b. A one-year administrative extension may be granted by the Zoning Administrator if the extension is requested prior to the permit expiration date and the Zoning Administrator determines that there was reasonable cause for delay in starting development. "Reasonable cause for delay" shall be based on a determination that:

- i. The delay is the result of delays in a state or federal permitting process; or
 - ii. The applicant has made a good faith effort to exercise his rights under the permit and, though the use or actual construction of structures authorized permit has not begun, the permittee is conducting work at the site in furtherance of the permitted project.
 - c. Only recording fees shall be assessed for an administrative extension.
 - d. A one-year permit extension granted under this subsection is not renewable. Should the permittee fail to substantially commence the project within the one-year extension period, he or she will be required to submit a new application for development.
2. **DRB Approvals.** Development Review Board approvals shall remain in effect as follows:
 - a. **Subdivision Approval.** Final subdivision approval by the DRB shall remain in effect and run with the land, and legally recorded subdivision plats, as approved by the DRB, shall not expire; however mandatory lot merger requirements under Section 3.8 may apply to undeveloped lots that become nonconforming under subsequent zoning amendments. For purposes of these regulations, any lot approved by the DRB as part of a planned unit development under Article IX is considered a conforming lot.
 - b. **Site Plan and Conditional Use Approval.** Site plan and conditional use approval by the DRB shall expire with the expiration of the zoning permit, and may be extended only in accordance with Subsection D.1 above; or as provided for abandoned structures under Section 3.1. Once approved uses or structures are established, site plan and conditional use approvals shall remain in effect and run with the land.
 - c. **Variance Approval.** Variance approval expires with the expiration of a zoning permit. Variance approval shall remain in effect and run with the land for structures or structural alterations that are constructed in strict compliance with the conditions of variance approval.

Section 10.4 Certificates of Occupancy & Compliance

- A. **Certificate of Occupancy.** A certificate of occupancy issued by the Zoning Administrator is required prior to the use or occupancy of land, a principal structure, or part thereof, for which a zoning permit has been issued. The purpose of this certificate is to ensure that the use or structure, as established, conforms to these regulations and the conditions of approval.

Certificates of occupancy shall not be required for certain exterior residential accessory structures, unless those structures are located within a Flood Hazard Overlay District (Special Flood Hazard Areas). Those exterior residential accessory structures, outside of the Flood Hazard Overlay District (Special Flood Hazard Areas), which are exempt from obtaining a certificate of occupancy are: satellite dishes, decks, porches, patios, play structures, tree houses, doghouses, barns, sheds, garages, carports, lean-tos, storage buildings, swimming pools, tennis courts and other paved ball courts. All exterior residential accessory structures must, however, comply with all other requirements of these regulations and conditions of approval.

1. If required, the application for a certificate of occupancy shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit the application, including as-built drawings where applicable, to the Zoning Administrator upon substantial completion of required improvements, but prior to the use or occupancy of the land or structure.
 - a. **Substantially Complete.** A development shall be deemed substantially complete if it meets all applicable permit requirements and conditions, and is habitable or otherwise able to be occupied or used for its intended purpose.
2. A certificate of occupancy shall not be issued until:
 - a. The applicant documents that all necessary permits and approvals required by these regulations, including applicable state and federal permits, have been obtained.
 - b. The applicant provides certification from a professional engineer or site technician (designer) licensed by the state that wastewater and water supply systems have been installed and tested as approved by the state.
 - c. The applicant provides certification from a licensed engineer that all permitted road and driveway improvements have been completed in conformance with approved plans.
 - d. The Zoning Administrator determines that the development has been completed in conformance with permits and approvals, from as-built drawings submitted by the applicant and/or site inspection.
3. The Zoning Administrator shall inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.
4. A certificate of occupancy shall be issued or denied by the Zoning Administrator within 14 business days of receipt of the complete application. If the Zoning Administrator fails

to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate, on appeal, shall be deemed issued on the 15th day.

5. Certificates of occupancy shall be posted, delivered and recorded in the Underhill land records and in the zoning file for the property in the same manner as zoning permits under Section 10.3.

6. The Zoning Administrator's decision to issue or deny a certificate of occupancy may be appealed to the Development Review Board under Section 10.5.

B. Certificate of Compliance. After the effective date of these regulations, the Development Review Board may require, as a condition of final subdivision approval under Section 7.6, that a certificate of compliance be obtained to ensure all required improvements, including road and other infrastructure improvements, have been installed in accordance with the conditions of subdivision approval, prior to any further land development. If an approved subdivision is developed in phases, a certificate of compliance may be issued for each phase of development.

1. The application for a certificate of compliance shall be submitted to the Zoning Administrator with as-built plans prepared by a licensed engineer, drawn to scale, that show the locations of all survey monuments and improvements as constructed or installed. The Zoning Administrator may rely on application information submitted for the subdivision as approved to determine whether as-built drawings conform to the subdivision plat and other conditions of approval.

2. The Zoning Administrator may conduct one or more site inspections to ensure that all improvements have been installed as represented, in conformance with these regulations and the conditions of approval.

3. A certificate of compliance shall be issued or denied in writing by the Zoning Administrator within 14 business days of receipt of the complete application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate, on appeal, shall be deemed issued on the 15th day.

a. If the Zoning Administrator determines that improvements as constructed or installed do not meet specific conditions of subdivision approval, a certificate of compliance shall be denied, and cannot be issued until a subdivision amendment has been applied for and obtained by the applicant under Section 7.8.

Section 10.5 Appeals

A. Zoning Administrator Decisions. An applicant or other "interested person" as defined under the Act [§4465] and Section 11.2 may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal

with the Clerk of the Development Review Board, and by filing a copy of the notice with the Zoning Administrator.

1. **Notice of Appeal.** A notice of appeal filed with the Development Review Board under this section shall be in writing and include the following information:
 - a. the name and address of the appellant;
 - b. a brief description of the property with respect to which the appeal is taken;
 - c. a reference to applicable provisions of these regulations;
 - d. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and
 - e. the alleged grounds why such relief is believed proper under the circumstances.
2. **Variances.** A variance request under the Act [§4469] and Section 5.5 may be considered on appeal, or concurrently with site plan or conditional use review, as long as the requirements of this section are met. Applicants or appellants shall submit information sufficient for the DRB to make required findings under all variance criteria under Section 5.5 and, for development within Special Flood Hazard Areas, also under Section 6.8.
3. **Hearing.** The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing. The DRB shall give public notice of the hearing under Section 10.7, and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
4. In accordance with the Act [§4470], the Development Review Board may reject an appeal without hearing, and render a written decision that includes findings of fact, within 10 days of the filing of the notice of appeal, if the DRB determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.
5. All appeal hearings shall be open to the public. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned and continued by the Board from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.
6. A decision on appeal shall be rendered within 45 days after the adjournment of the hearing. The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality, in accordance with Section 10.7.
7. The Selectboard shall set the fee for appeals of Zoning Administrator decisions. All costs incurred by the town in association with the appeal shall be borne by the appellant.

B. **DRB Decisions.** The applicant, appellant, or any other interested person who has participated in an appeal proceeding of the Development Review Board under this section may appeal a decision rendered by the DRB, within 30 days of such decision, to the Vermont Environmental Division of Superior Court in accordance with the Act [§4471].

1. "Participation" in a board proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Zoning Administrator who shall supply a list of interested persons (including the applicant if not the appellant) to the appellant within five business days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

C. **Reconsiderations.** A request for reconsideration of a DRB decision may be submitted to the DRB by an interested party within 30 days of the date of the decision. The request must include new information that the DRB had not previously considered. In accordance with the Act [§4470], the DRB may reject the request for reconsideration without hearing and render a decision, including findings of fact, within 10 days of the filing of the application if the DRB determines that the issues raised on appeal have been decided in an earlier appeal, or involve substantially or materially the same facts by or on behalf of the appellant.

Section 10.6 Violations & Enforcement

A. **Violations.** In accordance with the Act [§§4451, 4452], the commencement or continuation of any land development, subdivision or use that is not in conformance with the provisions of these regulations shall constitute a violation. All violations shall be pursued. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town of Underhill, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.

B. **Notice of Violation.** No action may be brought under this section unless the alleged offender has had at least seven days notice by certified mail that a violation exists, as required under the Act [§4451]. The warning notice shall state that:

1. a violation exists;
2. that the alleged offender has an opportunity to cure the violation within the seven days;
3. that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days; and

4. that action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven- day notice period and within the next succeeding 12 months.

C. **Limitations on Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality in accordance with Section 10.7.

Section 10.7 Administrative Requirements & Procedures

A. **Appointments.** The following appointments shall be made by the Underhill Selectboard in association with the administration and enforcement of these regulations:

1. **Zoning Administrator (Administrative Officer).** The Selectboard shall, from nominations submitted by the Planning Commission, appoint a Zoning Administrator for a term of three years. An acting Zoning Administrator may be appointed by the Selectboard from Planning Commission nominations who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.
2. **Development Review Board.** Development Review Board (DRB) members and alternates shall be appointed by the Selectboard for specified terms. The DRB shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct. The DRB shall have all powers and duties as set forth in the law and these regulations.
3. **Conservation Commission.** The Underhill Conservation Commission, in conformance with the Act [§4464] may, at its discretion, serve in an advisory capacity to the applicant and Development Review Board. For purposes of these regulations, the Commission may:
 - a. Review applications and prepare recommendations on review standards under these regulations that are within the Conservation Commission's purview for consideration by the DRB at a public hearing on an application.
 - b. Meet with applicants, interested parties, or both, attend site visits, and perform other fact finding that allows the Commission to prepare its recommendations.

- c. Inform applicants of any negative Commission recommendations prior to the public hearing, and suggest remedies to correct identified deficiencies in the application.

4. **Planning Commission.** Planning Commission members shall be appointed by the Selectboard. The Commission shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct. The Commission shall have the following duties in association with these regulations:

- a. Prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, include amendments submitted by petition.
- b. Prepare and approve written reports on any proposed amendment to these regulations as required.
- c. Hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Selectboard.

B. **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fee schedule may be reviewed and revised periodically.

C. **Technical Review.** Should the Development Review Board or the Zoning Administrator require the assistance of an independent technical review when reviewing applications:

1. The Zoning Administrator or DRB shall prepare a scope for the technical review. The scope shall be strictly limited and relevant to specific review criteria upon which findings and a decision must be made under the regulations.
2. The review shall be conducted in a timely manner.
3. The review shall be conducted by an independent consultant who is clearly qualified and demonstrates necessary expertise in the pertinent field(s), and, where applicable, is licensed by the state.
4. The cost of the review shall be paid for by the applicant.

D. **Public Notice.** In accordance with the Act [§4464(a)], warned public hearings shall be required for site plan and conditional use review, appeals, variances, and preliminary and final subdivision review. Notice shall be the responsibility of the Zoning Administrator and shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the Town of Underhill.
2. Posting of the same information in the following three public places: the Underhill Town Hall, the Underhill Flats Post office; and the Underhill Center Post Office.
3. Posting of a notice of hearing within view from the public right-of-way nearest to the property for which the application is being made.

4. Written notification, sent by certified mail return receipt requested, to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes:

- a. a description of the proposed project,
- b. information that clearly informs the recipient where additional information may be obtained, and that
- c. participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

5. For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

6. For applications in which a waiver or variance is sought regarding setbacks from a state highway, written notification to the Secretary of the Agency of Transportation.

7. Cost of all required notice shall be borne by the applicant.

E. Meetings and Hearings.

1. **Development Review Board.** All meetings and hearings of the Development Review Board, except for deliberative and executive sessions, shall be open to the public. The DRB shall adopt rules of procedure and rules of ethics that at minimum address the following, in accordance with the Act [§4461] and Vermont Open Meeting Law:

- a. The conduct of any meeting and the taking of any action.
- b. Quorums which shall be not less than a majority of the members of the DRB.
- c. The DRB shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions which shall be filed immediately in the Town Office as public zoning records.
- d. Public hearings shall be noticed and warned in accordance with Subsection D. In any regulatory hearing of the DRB there shall be an opportunity for each person wishing to achieve status as an interested person, for purposes of participation or appeal under Section 10.5 to demonstrate that the criteria for achieving such status are met. The Board shall keep a written record of the name, address, and participation of each of these persons.
- e. The DRB may recess the proceedings on any application pending submission of additional information, and should close evidence promptly after all parties have submitted requested information.

f. No member of the DRB shall communicate on any issue in an application proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by DRB members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.

g. Members of the DRB shall not participate in the decision on an application unless they have heard all the testimony and reviewed all the evidence submitted in the hearing. This may include listening to a recording, or reading the minutes or transcripts of testimony they have missed, and reviewing all exhibits and other evidence prior to deliberation.

2. **Conservation Commission.** Meetings of the Conservation Commission to review an application under these regulations shall comply with Vermont's Open Meeting Law and requirements of the Commission's rules of procedure, but shall not be conducted as public hearings before a quasi-judicial body. Commission recommendations may be presented in writing at or before Development Review Board public hearing on the application, or may be presented orally at the public hearing.

F. **Decisions.** The Development Review Board may recess proceedings on any application pending the submission of additional information. The DRB will close evidence promptly after all parties have submitted requested information, and shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period, on appeal, shall be deemed approval and shall be effective the 46th day.

1. All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 10.5.

2. DRB decisions shall also include a statement, in content and form approved by the Secretary of the Agency of Natural Resources, that state permits may be required and that the applicant or permittee should contact the state's regional permit specialist or individual state agencies to determine which state permits must be obtained before certificates of occupancy or compliance are issued, or any construction may commence.

3. In rendering a decision in favor of the applicant, the DRB may attach reasonable conditions and safeguards as it deems necessary to implement the purposes of the law, these regulations, and the town plan currently in effect. These may include, as conditions of approval:

- a. The submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Underhill Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project.
 - b. The requirement that no certificate of occupancy or certificate of compliance be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval, and all other applicable municipal, state, and federal permits have been obtained by the applicant.
4. All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection G.
5. **Administrative Amendments.** Any decision issued by the Development Review Board may authorize subsequent changes or amendments to an approved project subject to administrative review by the Zoning Administrator, rather than DRB review, in accordance with the following, which shall be specified in the DRB's decision:
- a. The decision shall clearly specify the thresholds and conditions under which administrative review and approval shall be allowed.
 - b. The thresholds and conditions shall be structured such that no new development shall be approved that results in substantial impact under the requirements of these regulations, or any of the thresholds or conditions set forth in the decision.
 - c. No amendment issued as an administrative review shall have the effect of substantially altering the findings of fact of any DRB approval in effect.

Any decision of the Zoning Administrator authorized in this manner may be appealed to the DRB in accordance with Section 10.5.

G. Recording Requirements.

1. Within 30 days of the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town generally as provided in 24 V.S.A. §1154(c), and file a copy in the Town Office in the zoning files. The applicant shall be charged for the cost of the recording fees.
2. For development within the Flood Hazard Area Overlay District, the Zoning Administrator shall also maintain a record of all permits, elevation certificates,

1 elevations, floodproofing certifications and variance actions issued for development
2 within the district as required under Section 6.9.

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4 3. Approved subdivision plats and plans shall be recorded by the applicant in the town land
5 records in accordance with the requirements of Section 7.7.

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7 H. **Availability & Distribution of Documents.** Copies of these regulations, other related
8 municipal regulations and ordinances, and the town plan shall be made available to the
9 public during normal business hours in the Underhill Town Office.

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